

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
Acting By Attorney General	:	
GERALD J. PAPPERT	:	
	:	No. M.D. 2004
Plaintiff	:	
	:	CIVIL ACTION - EQUITY
v	:	
	:	
CROSS COUNTRY BANK, INC. and	:	
APPLIED CARD SYSTEMS, INC.	:	
	:	
Defendants	:	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU, AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH

**BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT
HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE
ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY
OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO
FEE.**

Central Pennsylvania Legal Services, Inc.
213-A North Front Street
Harrisburg, PA 17101
(717) 232-0581

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
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John M. Abel
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AND NOW, this day of _____, 2004, comes the Commonwealth of Pennsylvania (hereinafter ACommonwealth≡), acting by its Attorney General, Gerald J. Pappert, through the Bureau of Consumer Protection, and brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and reenacted by the Act of November 24, 1976, P.L. 1166 No. 260, the Act of December 3, 1996, 73 P.S. § 201-1 *et seq.* (hereinafter AConsumer Protection Law≡), and the Fair Credit Extension Uniformity Act (AFCEUA≡), 73 P.S. § 2270.1 *et seq.* The Consumer Protection Law authorizes the Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, to restrain by temporary and/or permanent injunction, unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by § 201-3 of the Consumer Protection Law. In support of this action the Commonwealth respectfully represents the following:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to § 761 of the Judicial Code, 42 Pa. C.S.A. § 761(a)(2).

PARTIES

2. The Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Gerald J. Pappert, through the Bureau of Consumer Protection, Philadelphia Regional Office, 21 South 12th Street, Second Floor, Philadelphia, Pennsylvania 19107.

3. Defendant Cross Country Bank, Inc. (ACross Country≡) is a Delaware corporation and a bank chartered by the State of Delaware with its principal place of business at 800 Delaware Avenue, Wilmington, Delaware 19801.

4. Defendant Applied Card Systems, Inc. (AApplied Card Systems≡) is a Delaware corporation with its principal place of business at 50 Applied Card Way, Glen Mills, Delaware County, Pennsylvania 19342.

5. Unless otherwise specified, whenever reference is made in this complaint to any act of any of the defendants or any agent of the defendants, such allegations shall be deemed to mean the act of Defendant Cross Country and Defendant Applied Card Systems acting individually, jointly or severally.

6. The methods, acts or practices complained of herein were carried out pursuant to Defendants= direction, control and/or supervision and were performed by their employees and/or agents acting within the scope of their employment and/or agency.

BACKGROUND

7. The Commonwealth has reason to believe that the Defendants have used or are

about to use methods, acts or practices declared unlawful by § 201-3 of the Consumer Protection Law.

8. The Commonwealth believes that the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts and practices of the Defendants as hereinafter set forth. Further, the Commonwealth requests injunctive relief, civil penalties, costs and other appropriate equitable relief as redress for violations of the Consumer Protection Law.

9. At all times relevant and material hereto the unlawful methods, acts and practices complained of herein have been wilfully used by Defendants.

10. The Bureau of Consumer Protection has received over 400 complaints about Defendants' business practices. Some of these complaints include citizens over the age of sixty.

11. The Commonwealth believes and therefore avers that there are also additional consumers that have not filed complaints with the Bureau of Consumer Protection who have also been harmed due to the methods, acts and practices of the Defendants which include but are not limited to those as alleged herein.

12. At all times relevant and material hereto, Defendant Cross Country engaged in trade and commerce within the Commonwealth of Pennsylvania by, among other things, providing credit cards to consumers.

13. At all times relevant and material hereto, Defendant Applied Card Systems engaged in trade and commerce within the Commonwealth of Pennsylvania by, among other things, performing collection work on the credit card accounts of Cross Country.

14. Defendant Applied Card Systems was formed in 1987 under another name and for

its first several years focused on servicing small banks issuing their own credit cards.

15. Defendant Applied Card Systems eventually decided to issue its own credit cards through a new bank chartered in 1996 as the Defendant Cross Country Bank, Inc.

16. Defendant Applied Card Systems currently devotes much, if not all, of its resources to collecting on accounts for credit cards issued by Defendant Cross Country.

17. Both Defendants were founded by the same individual, Rocco Abessinio.

18. On its website, the Defendant Applied Card Systems proclaims that Defendant is handling over 100,000 inbound and outbound telephone calls, tens of thousands of payments, and thousands of pieces of correspondence every day. (See excerpts from Defendant's website attached hereto as Exhibit "A").

19. Defendant Applied Card Systems also boasts on the website that its "phenomenal growth and success is a direct result of," among other things, what Defendant calls its commitment to "superior quality service." (See Exhibit "A").

20. Defendant Applied Card Systems holds itself out as one of the leading credit card accounting services companies in the country, employing over 2500 associates. (See Exhibit "A").

21. Defendant Cross Country Bank likewise holds itself out as one of the fastest growing credit card banks in the country with over three million customers. (See Exhibit "A").

22. Through its collection efforts, Defendant Applied Card Systems acts as the agent for Defendant Cross Country in that, among other things, the Defendant Applied Card Systems in contacting consumers, either in written or verbal format, uses the name Cross Country Bank. By way of example only, attached hereto (as Exhibit "B") is a sample redacted dunning letter

wherein the name Cross Country Bank, Inc. is employed and nowhere is the name Applied Card Systems, Inc. used.¹

23. Cross Country claims to provide services to customers who have had Adifficulty establishing good credit due to past credit problems or lack of credit history.≡ (See excerpts from Defendants' websites attached hereto as Exhibit "A"). As such, Cross Country targets their business to that group of consumers commonly referred to as the Asub-prime≡ credit market.

24. Cross Country uses a variety of means to advertise and solicit its credit cards including without limitation direct mail pieces. (A sample redacted direct mail piece is attached hereto as Exhibit AC≡).

25. Cross Country has represented in its advertisements and solicitations that the consumer has been approved for a credit limit up to several thousand dollars when in truth and in fact many consumers received a much lower credit limit - often anywhere from \$250 to \$350.

26. Cross Country=s credit cards come with a number of fees that consume a significant part of the consumers already minimal credit limit. As a consequence, many consumers find themselves in a worst position - credit wise - after doing business with Cross Country.

¹As nearly all contact with consumers has been by persons representing themselves to be acting on behalf of Defendant Cross Country Bank, consumers may not be aware that they could be dealing with an employee of Defendant Applied Card Systems directly. Therefore, for purposes of this section of the Complaint, the term "Cross Country" will mean to refer to both Defendant Applied Card Systems and Defendant Cross Country Bank.

27. The fees, and other charges imposed by Cross Country, as well as the business practices recited below, actually end up impairing, rather than helping, the consumer=s credit standing.

28. While Cross Country professes that it strives to help its customers rebuild their credit when they have experienced financial problems and will work with their clients to Aobtain the positive credit history they deserve,≡ the reality is much different for those consumers who are victimized by the Defendant=s credit card practices alleged below in Count I. (See excerpts from website attached hereto as Exhibit “A”).

29. The truth for many consumers is that their financial/credit picture is substantially impaired by reason of their dealings with the Defendants; nonetheless, the Defendants continue to mislead consumers by statements such as the following found on their website:

- “We see each new CUSTOMER as the beginning of a journey, and we work hard to establish that credit and become a financial partner.”
- “We aim to serve all of our valued CUSTOMERS as educators, guides and ultimately, partners, for we truly believe that every CUSTOMER can make the commitment to achieve the good credit and benefits that he or she deserves.”
- “Laying the foundation for partnerships that last long after their good credit has been restored, we endeavor to educate our CUSTOMERS on proper account management.” (See Exhibit “A”).

30. Instead of restoring good credit as Cross Country proclaims, many consumers are never able to become current with their payments and ultimately default. Reflective of this fact is the high percentage of Cross Country accounts that are charged off.

31. Once the consumer falls behind in payments, the Defendant proceeds to employ a battery of tactics that illegally harass consumers.

32. While Cross Country professes to treat its customers with courtesy, professionalism, and Autmost respect,≡ the experience of consumers is much different given the abusive collection practices employed by persons in the name of Cross Country as alleged in Count II below. (See Exhibit “A”).

33. On the one hand, the Defendant Cross Country states that it “cares about people – we care about you;” in fact, however, the Defendant harasses consumers, as well as the consumers’ small children, even going so far as to use profanity and obscene language in dealing with persons who find themselves in financial distress.

34. Given this pattern of illegal behavior, the Commonwealth brings this action in the public interest (as set forth in the Counts below) against these Defendants for violations of state law arising out of their multiple misrepresentations, broken promises, deceptive sales practices (including a failure to disclose material terms of their offers) as well as rampant collector abuse.

DEFENDANTS= BUSINESS PRACTICES

COUNT I

VIOLATIONS ARISING OUT OF **SALE OF CREDIT CARDS**

35. The Commonwealth incorporates Paragraphs 1 through 34 as though the same were more fully set forth herein at length.

36. In connection with the issuance of its credit cards, Defendant Cross Country charged and/or charges a \$100 application fee along with a \$50 annual membership fee. For other cards, the Defendant Cross Country charged and/or charges a \$10 monthly maintenance fee

in lieu of the up-front application fee. In light of these fees, and the credit limit received by consumers (that is much lower than that advertised), many credit card holders are left with very little in terms of available credit upon issuance of the card.

37. These fees are imposed against the consumer=s account immediately upon approval of their application regardless of whether or not the consumer has had the opportunity to make any purchases on their credit card.

38. Cross Country=s up-front solicitations, touting limits believed to be as high as \$2,500, when it knows or should know that such would rarely be the case, deceives and misleads consumers to their detriment. At the same time Defendant Cross Country fails to timely, adequately and meaningfully disclose the impact its fees will have on the credit ultimately available to consumers.

39. On top of these high initial fees, Cross Country throughout the history of the consumer=s account imposes a series of other fees, that further imperils a consumer=s credit standing. For instance, Defendant Cross Country charged and/or charges a late fee of approximately \$30 every month in which consumers fail to make their total minimum monthly payment and charged and/or charges an over-the-limit fee of approximately \$30 every month in which the consumers= balance exceeds their limit.

40. These fees that are added to the account holder=s new monthly payment must be paid on time and in full. When the consumer fails to do that, Cross Country proceeds to impose additional late fees and over-the-limit fees.

41. Throughout the life of the account, Cross Country proceeds to impose even more charges and fees for routine customer assistance and debt collection services. For instance,

consumers have been charged for obtaining basic account information, processing payments over the phone or Internet.

42. Another service that the Defendant Cross Country offers is the rapid approval/express handling service for a fee of \$10. Consumers would check a box on the acceptance certificate to process their request within ten business days after the Defendant received the completed acceptance certificate. In truth and in fact, however, most, if not all, applications were reviewed for approval within ten days so therefore many consumers paid an extra \$10 for nothing in return. (A sample redacted acceptance certificate is at the bottom of Exhibit “C”).

43. Another Cross Country fee relates to a program enrolled in by consumers under the name of “Credit Account Protection” (“CAP”). Cross Country solicits consumers to pay to enroll in this program for a monthly fee based upon the consumers= account balance. Consumers are told that they pay no more than \$1 per \$100 balance on their credit card account to receive the benefits of the program. (See Exhibit “A”).

44. Cross Country touts the program as a Acomplete credit card protection plan that gives you peace of mind.≡ Cross Country further represents that in the event a consumer loses their job or becomes disabled, CAP will pay a monthly benefit equal to 5% of the consumer=s credit card balance “up to \$10,000.” Likewise, Cross Country prominently promotes CAP as paying the consumer=s credit card balance in full Aup to \$10,000≡ in the event of death or covered dismemberment. (See Exhibit “A”).

45. Consumers, however, have little to gain for coverage hailed to be “up to \$10,000” when in reality few consumers have balances anywhere near that amount.

46. While the Defendant Cross Country promises they will help consumers build their credit, the reality is they do nothing for many consumers other than issuing a high fee credit card that upon usage by the consumers oftentimes results in impaired credit. For these consumers, Defendants woefully fail to deliver on their promises of help, education and guidance.

47. By reason of the methods, acts or practices described above, the Defendants repeatedly and persistently engaged in fraud in the advertising, marketing, and soliciting of credit cards and related programs.

48. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by § 3 of the Consumer Protection Law, as defined by § 2 of said law, including but not limited to the following:

- (a) Section 201-2(4)(ii) which prohibits Acausing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- (b) Section 201-2(4)(iii) which prohibits Acausing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- (c) Section 201-2(4)(v) which prohibits Arepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (d) Section 201-2(4)(vii) which prohibits Arepresenting that goods or services

are of a particular standard quality or grade, or that goods are of a particular style or model, if they are of another≡;

- (e) Section 201-2(4)(ix) which prohibits Aadvertising goods or services with intent not to sell them as advertised≡;
- (f) Section 201-2(4)(xxi) which prohibits Aengaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.≡

49. Citizens of the Commonwealth are suffering and will continue to suffer irreparable harm unless the acts and practices complained of are enjoined.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendants= conduct as described in the Complaint to be in violation of the Consumer Protection Law;

B. Permanently enjoining Defendants, their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from:

(i) Engaging in conduct which has the likelihood of causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of ə 201-2(4)(ii) of the Consumer Protection Law;

(ii) Engaging in conduct which has the likelihood of causing confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of ə 201-2(4)(iii) of the Consumer

Protection Law;

(iii) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of § 201-2(4)(v) of the Consumer Protection Law;

(iv) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, in violation of § 201-2(4)(vii) of the Consumer Protection Law;

(v) Advertising goods or services with intent not to sell them as advertised in violation of § 201-2(4)(ix) of the Consumer Protection Law;

(vi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of § 201-2(4)(xxi) of the Consumer Protection Law.

C. Prohibiting Defendants from otherwise violating the Consumer Protection Law;

D. Requiring Defendants to make full restitution to each and every consumer who is entitled to restitution from Defendants under the Consumer Protection Law;

E. Requiring Defendants to pay to the Commonwealth a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) for

each and every such violation where the victim is sixty (60) years of age or older;

F. Requiring Defendants to forfeit their right to engage in any business within the Commonwealth until they have paid the restitution, refunds and civil penalties to the Commonwealth referred to in Paragraphs D and E;

G. Requiring Defendants, prior to engaging in any business in the Commonwealth, to give written notice to the Commonwealth through the Office of Attorney General, Bureau of Consumer Protection, Philadelphia Regional Office, Attn: John M. Abel, 21 South 12th Street, Second Floor, Philadelphia, PA 19107, as to the location of such business and the purpose of such business;

H. Directing Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices set forth in this Complaint; and

I. Providing any other such relief as the Court may deem necessary and appropriate to effectuate the purpose of the Consumer Protection Law including, but not limited to, directing the Defendants to pay the Commonwealth for the costs of its investigation and prosecution of this action.

COUNT II

VIOLATIONS ARISING OUT OF DEBT COLLECTION PRACTICES

50. The Commonwealth incorporates Paragraphs 1 through 49 as though the same were more fully set forth herein at length.

51. Cross Country has been repeatedly warned by the Commonwealth regarding its illegal debt collection practices but nonetheless has consistently and systematically engaged in a pattern of violations that have continued. (See redacted warning letters attached hereto as

Exhibit AD≡).

52. Defendants= collectors routinely and systematically abuse, harass, mislead and deceive consumers through a variety of illegal debt collection practices, in violation of Pennsylvania law as detailed below.

53. The Pennsylvania Fair Credit Extension Uniformity Act (“FCEUA”) provides that a debt collector=s violations of any provisions of the Federal Fair Debt Collection Practices Act constitutes an unfair or deceptive debt collection act or practice under the state statute. 73 P.S. § 2270.4(a).

54. The FCEUA provides that a debt collector or creditor who engages in any unfair or deceptive debt collection act or practice under that statute shall be deemed to have violated the Unfair Trade Practices and Consumer Protection Law. 73 P.S. § 2270.5(a).

55. Defendants made and/or make multiple, frequent and continuous telephone calls to consumers, both at their homes and places of employment, over an extended period of time. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants would call a Philadelphia consumer as much as ten times a day;
- (b) Defendants called a Bucks County consumer at least 3-4 times a day on both her cell and home numbers;
- (c) According to another Bucks County person, he arrived at work one Monday morning to discover 12 “harassing” messages on his work phone left over the weekend;
- (d) Defendants’ representative told a Bradford County consumer that “we’ll call you every 5 minutes if we want to because you can’t stop us”; in another instance Defendants’ representative said we will harass you until the point you are ready to “shoot yourself” to which the consumers

observed that such sounded like a threat following which the representative laughed;

- (e) Defendants' representative called a Blair County consumer (who was out of work due to nerve damage to her foot) four times on a Sunday;
- (f) a Berks County consumer was called 35 times within one week.

56. For a number of years, Cross Country's automatic telephone dialing system would call consumers multiple times throughout the day.

57. Cross Country also made it a practice to continue to call consumers even if they requested not to be contacted; it is only until the consumer made such a demand or request three times that Cross Country would no longer contact the consumer.

58. This persistent pattern of relentless and repeated calling violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692d and 1692d(5), and thereby violates the FCEUA.

59. In the event that one or both of the Defendants are determined to be Creditors as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(4) and 2270.4(b)(4)(v).

60. Defendants' collectors often use obscene, profane, derogatory, rude and hostile language in communicating with debtors. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants' representative calling a Bedford County consumer: "white trash," "f—king bum," "liar," "deadbeat";
- (b) Defendants' representative called a Fayette County consumer a "b-tch";
- (c) Defendants' representative told the sister of a Blair County consumer who picked up the phone "Look, b-tch, put your sister on the phone";

- (d) Defendants' representative called another Philadelphia consumer "a thief" saying "you will soon be living on the street . . . driving a go-cart."

61. Defendants conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692d and 1692d(2), and thereby violates the FCEUA.

62. In the event that one or both of the Defendants are determined to be Acreditors≡ as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(4) and 2270.4(b)(4)(ii).

63. Defendants= collectors routinely and systematically contact consumers at all hours throughout the day ranging from before 8:00 a.m. until after 9:00 p.m. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants' representatives would call a Philadelphia consumer as early as 7:00 a.m.;
- (b) Defendants' representative called another Philadelphia consumer after 9:00 p.m.;
- (c) A Fayette County consumer would receive calls anywhere from 7:00 a.m. to 11:00 p.m.

64. Defendants= conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. § 1692c(a)(1), and thereby violates the FCEUA.

65. In the event that one or both of the Defendants are determined to be Acreditors≡ as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. § 2270.4(b)(2)(i).

66. Defendants= collectors repeatedly and persistently contact consumers at their place of employment despite repeated requests and demands that Defendants not do so. By way

of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) The employer of a Philadelphia consumer told Defendants' representative to stop calling the work place but the calls continued 2 or 3 times a day;
- (b) Another Philadelphia consumer verbally told, wrote and faxed Defendants to stop calling her at work but all her requests were ignored;
- (c) A Bedford County consumer told Defendants' representative that he was not allowed to take personal calls at work and instructed Defendants in writing to stop calling him at work; however, Defendants' representative continued calling and said they will keep calling until he pays the bill.

67. Defendants= conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. § 1692c(a)(3), and thereby violates the FCEUA.

68. In the event that one or both of the Defendants are determined to be Acreditors≡ as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. § 2270.4(b)(2)(iii).

69. Defendants= collectors repeatedly and persistently refuse to close accounts when requested by the consumer, while at other times falsely inform consumers that they are not allowed to close their accounts, thereby allowing Defendants to continue to charge the consumer=s account for fees. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants refused to close the account of a Blair County consumer who lost her job due to nerve damage in her foot;
- (b) Defendants' initially refused to close the account of an unemployed Bucks County consumer and instead tried to increase the consumer's credit limit.

70. Defendants= conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10) and 1692f, and thereby violates the

FCEUA.

71. In the event that one or both of the Defendants are determined to be Acreditors≡ as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(5), 2270.4(b)(5)(ii), 2270.4(b)(5)(x) and 2270.4(b)(6).

72. Defendants= collectors are trained to and in fact routinely employ a technique referred to as Atricking the gatekeeper≡ by pretending not to be a collector, and feigning some personal or other relationship with the consumer, so as to induce the consumer to answer the call. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants' representative feigned friendship with a Blair County consumer opening the call by saying things like, "Is [first name of the consumer] there...this is Susan.";
- (b) Defendants' representative used a similar tactic with a Bucks County resident by calling and asking for the consumer by first name only;
- (c) Similarly, with a Philadelphia consumer, the Defendants' representative would open the telephone conversation by saying, "Hey, [consumer's first name], this is [first name of the representative], how are you?";
- (d) At other times, the Defendants' representatives would open their call to a Bucks County person by saying "this is your bank calling" leading the person to believe that it was their personal bank;
- (e) Defendants' representative opened the conversation with a Fayette County resident by saying, "Hi, [first name of consumer], how are you...how's the weather?"

73. The conduct of Defendants, as aforesaid, violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692d(6), 1692e and 1692e(10), and thereby violates the FCEUA.

74. In the event that one or both of the Defendants are determined to be Acreditors≡

as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(4)(vi), 2270.4(b)(5), 2270.4(b)(5)(x), and 2270.4(b)(6).

75. Defendants= collectors persistently and consistently use a variety of false, misleading and improper threats so as to wrongfully coerce a payment from the consumer. By way of example only, the Commonwealth has received consumer complaints reporting the following:

- (a) Defendants' representative told a Philadelphia consumer that "we know you're working and 'we will garnish your wages' and 'we are going to ruin your credit'";
- (b) Defendants' representative told a Berks County consumer that he was a black belt martial arts expert and could take care of the consumer which the consumer interpreted as a threat;
- (c) Defendants' representative threatened a Fayette County consumer that they would garnish his wife's wages and get a court judgment against their house.

76. Defendants= conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692d, 1692d(1), 1692e, 1692e(2)(A), 1692e(4), 1692e(5), 1692e(7), 1692e(8), 1692e(10), and 1692f and thereby violates the FCEUA.

77. In the event that one or both of the Defendants are determined to be Creditors as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(4), 2270.4(b)(4)(i), 2270.4(b)(5), 2270.4(b)(5)(ii), (iv), (v), (vii), (viii), (x) and 2270.4(b)(6).

78. Defendants= collectors repeatedly and consistently make improper contact with third parties, including close family members in a way that amounts to abuse and harassment. By way of example only, the Commonwealth has received consumer complaints reporting the

following:

- (a) Defendants' representative would call a Chester County resident and speak with the consumer's eight year old son and eleven year old daughter, raising their voice and questioning the children as to the whereabouts of the consumer with statements like "Put your mother on the phone, now ... we know she's there...tell your mom to call us...," making the children cry and otherwise becoming upset;
- (b) Defendants' representative similarly called a Philadelphia consumer and spoke with her five year old son telling him, "Do you know your mother doesn't pay her bills, tell your mom she needs to pay bills...put her on the phone, we know she is there...";
- (c) Defendants' representative attempted to collect a debt from a person, who had no dealings at all with the Defendants' bank, by way of phone calls at work that became so intrusive that the person was forced to file a report with the local police department;
- (d) Defendants' representative contacted a Philadelphia consumer and spoke with her sister advising that the consumer had an account which is in serious default and that the consumer better call Cross Country Bank immediately.

79. Defendants' conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692b and 1692c(b) thereby violates the FCEUA.

80. In the event that one or both of the Defendants are determined to be Creditors as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(1) and 2270.4(b)(3).

81. Defendants' collectors use a form collection letter attached hereto in redacted form as Exhibit "B."

82. In this letter, the Defendants advise the consumer that her recent check was returned by her bank unpaid stating that Most states have legislated criminal and/or civil penalties for writing bad checks. This letter will be our only notice to you that failure to make

good on this check will result in our reviewing all available legal remedies.≡

83. The letter closes with the statement: AAgain, this is our only notice prior to our review of enforcement alternatives. It is recommended that you contact **our legal representatives** toll free at (877) 887-2071 with any issue regarding this matter.≡ (emphasis added).

84. The phraseology Alegal representative≡ is confusing at best and deceptive at worse leading consumers to likely believe that the collectors with whom they are dealing are attorneys when such is not necessarily the case.

85. Defendants= conduct as aforesaid violates the Federal Fair Debt Collection Practices Act at 15 U.S.C. §§ 1692d, 1692d(1), 1692e, 1692e(2)(A), 1692e(5), 1692e(10) and 1692f, and thereby violates the FCEUA.

86. In the event that one or both of the Defendants are determined to be Acreditors≡ as that term is used in the FCEUA, then the aforesaid conduct violates that statute at 73 P.S. §§ 2270.4(b)(4), 2270.4(b)(4)(i), 2270.4(b)(5), 2270.4(b)(5)(ii), 2270.4(b)(5)(x) and 2270.4(b)(6).

87. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by § 3 of the Consumer Protection Law, as defined by § 2 of said law, including but not limited to the following:

- (a) Section 201-2(4)(ii) which prohibits Acausing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services≡;
- (b) Section 201-2(4)(iii) which prohibits Acausing likelihood of confusion or

of misunderstanding as to affiliation, connection or association with, or certification by, another ≡;

- (c) Section 201-2(4)(v) which prohibits Arepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (d) Section 201-2(4)(vii) which prohibits Arepresenting that goods or services are of a particular standard quality or grade, or that goods are of a particular style or model, if they are of another≡;
- (e) Section 201-2(4)(xxi) which prohibits Aengaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.≡

88. Citizens of the Commonwealth are suffering and will continue to suffer irreparable harm unless the acts and practices complained of are enjoined.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court issue an Order:

- A. Declaring Defendants= conduct as described in the Complaint to be in violation of the Consumer Protection Law;
- B. Permanently enjoining Defendants, their officers, agents, employees and all other persons acting on their behalf, directly or indirectly, from:
 - (i) Engaging in conduct which has the likelihood of causing confusion or misunderstanding as to the source, sponsorship, approval or

certification of goods or services, in violation of 201-2(4)(ii) of the Consumer Protection Law;

(ii) Engaging in conduct which has the likelihood of causing confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of 201-2(4)(iii) of the Consumer Protection Law;

(iii) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of 201-2(4)(v) of the Consumer Protection Law;

(iv) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, in violation of 201-2(4)(vii) of the Consumer Protection Law;

(v) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of 201-2(4)(xxi) of the Consumer Protection Law.

C. Prohibiting Defendants from otherwise violating the Consumer Protection Law and the Fair Credit Extension Uniformity Act;

D. Requiring Defendants to make full restitution to each and every consumer who is entitled to restitution from Defendants under the Consumer Protection Law;

E. Requiring Defendants to pay to the Commonwealth a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) for each and every such violation where the victim is sixty (60) years of age or older;

F. Requiring Defendants to forfeit their right to engage in any business within the Commonwealth until they have paid the restitution, refunds and civil penalties to the Commonwealth referred to in Paragraphs D and E;

G. Requiring Defendants, prior to engaging in any business in the Commonwealth, to give written notice to the Commonwealth through the Office of Attorney General, Bureau of Consumer Protection, Philadelphia Regional Office, Attn: John M. Abel, 21 South 12th Street, Second Floor, Philadelphia, PA 19107, as to the location of such business and the purpose of such business;

H. Directing Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices set forth in this Complaint; and

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I. Providing any other such relief as the Court may deem necessary and appropriate to effectuate the purpose of the Consumer Protection Law including, but not limited to, directing the Defendants to pay the Commonwealth for the costs of its investigation and prosecution of this action.

Respectfully submitted,

GERALD J. PAPPERT
Attorney General

FRANK T. DONAGHUE
Chief Deputy Attorney General
Director, Bureau of Consumer Protection

Date: _____

By: _____
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